IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 818 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GAFUR ISMAIL SHEIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 818 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR D.P. JOSHI, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/02/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order 30.9.2001 passed by the Commissioner of Police,

Surat City, in exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a dangerous person. The detaining authority has considered three registered offences against the detenu relating to theft cases. The detaining authority has also considered statements of two anonymous witnesses recorded on 5.9.2001 and 6.9.2001 and verified on 28.9.2001 and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public order.

3. Learned Advocate for the petitioner Mr. Prajapati restricted his arguments to the fact that there is nothing to indicate that there was disturbance to public order when the registered offences were committed. So far as statements are concerned, he submitted that there is no material to indicate that the power was properly exercised by the detaining authority under Section 9(2) of the PASA Act after undertaking due enquiry and verification regarding genuineness of the fear expressed by the witnesses and the need for use of power under Section 9(2) of the PASA Act, in comparison to the right of the detenu envisaged under Art. 22 of the Constitution of India. He has placed reliance on the decision of this Court in Bai Amina Vs. State of Gujarat, reported in 22 GLR 1186 and subsequent judgements wherein the said decision has been followed.

4. Learned Assistant Government Pleader Mr. D.P. Joshi has opposed to this petition.

5. Having regard to the rival side contentions raised before this Court, there is no dispute about the fact that the three offences registered against detenu relate to theft cases individual in nature. There is no material to indicate when the incident occured or there was any disturbance to public order.

5.1 So far as statements are concerned, they have been verified by the detaining authority on 28.9.2001. There is nothing to indicate that the detaining authority examined the allegations made by the anonymous witnesses while considering social background of the detenu and the witnesses' anticedents and other relevant aspects to ensure that the fear expressed by the witnesses is genuine and not imaginery or by way of a camouflage used to cover up his own activities. The use of power under

Section 9(2) of the PASA Act therefore cannot be considered as based on cogent material. This would infringe the right of the detenu of making an effective representation and vitiate the detention. The petition therefore deserves to be allowed.

6. The petition is therefore, allowed. Order of detention dated 30.9.2001 passed by the Commissioner of Police, Surat City against the detenu is quashed and set aside. Detenu Gafur Ismail Sheikh be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave, J.)

*/Mohandas